S.B.CIVIL MISC. APPEAL NO. 48/1990
(Ramraji alias Amraji Vs. Ram Bhai Samalbhai Patel & others)

Date of order : 05.07.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Babulal Darji for Mr.J.M. Bhandari for the appellant
Mr.Anil Bachhawat for respondents No.4 and 5

This is claimant's appeal seeking enhancement over the amount of compensation awarded by the Motor Accidents Claims Tribunal, Jodhpur in Claim Case No.75/1983 by the award dated 27.10.1989.

According to the claimant-appellant, on 16.04.1982 he was occupying a truck bearing registration Number GRN 3269 in his capacity as driver; and at the time of accident the truck was being driven by respondent No.1 Rambhai and the appellant was sitting near the driver. While running on Pali to Jodhpur road when the said truck was crossing village Nimbla, another truck bearing registration No. RJK 6777 being driven by respondent No.2 Ismile Lakhe Khan came from behind and when the later one attempted to overtake from the wrong side, the appellant put his hand out to indicate to the truck coming from behind not to overtake; but ignoring his indication the truck RJK 6777 hit against the cabin of the truck occupied by the appellant that resulted in causing crushed injuries to the arm of the appellant that was severed from above the elbow.

Claiming compensation on various scores, the appellant submitted claim application against the said Ramjibhai in his capacity as owner and driver of truck GRN 3269; its insurer; and the driver, owner and insurer of the truck RJK 6777 (It may be noted that the insurer is the same for both the vehicles in its separate branches at Ahmedabad for truck GRN 3269 and at Jodhpur for truck RJK 6777). The application was contested on various scores including the fact that the accident occurred for the mistake of the driver of the truck GRN 3269 who brushed against the other truck while attempting to overtake. However, these questions need not be gone into, inasmuch the Tribunal has recorded the finding that the accident occurred for the negligence of the drivers of both the trucks and such finding have not been put to challenge by either of the parties.

On the question of quantification of compensation, learned Judge of the Tribunal has found that left arm of the claimant was amputated 6 inches below the shoulder and above the elbow. The learned Judge observed that the claimant was a driver and has shown his monthly income at Rs.1100/- per month; that of course he cannot carry out a driver's work but his right hand was available and hence he could take up some other job and has nearly 30 years of life left, in view of expected life span of about 65 years. After

these observations, the learned Judge has abruptly concluded that a sum of Rs.40,000/- be awarded to the claimant towards compensation and has made the award in that amount against all the non-applicants and has allowed interest at the rate of 4% per annum from 21.09.1983 the date when first time counsel appeared for the appellant; and has directed each of the respective branches of the insurer, respondent Nos. 4 & 5, to bear half of the amount of award.

Having heard learned counsel for the parties and having examined the impugned award, this Court is clearly of opinion that the impugned award on its quantification of compensation remains grossly inadequate and deserves suitable modification.

It is beyond doubt established on record that the left arm of the claimant appellant has been amputated below the shoulder and above the elbow leaving the stump of about 6 inches. A clear case of nearly 80% permanent partial disablement is made out (vide Entry 2, Part II of Schedule I to the Workmen's Compensation Act, 1923) and the appellant, driver by profession, has suffered serious set back in his life and has lost reasonable chances of earning his livelihood apart from suffering from inconvenience and losing the amenities in life. In view of the age of the claimant at 36 years

at time of accident, even while taking his income at Rs.1100/- per month the loss of earning capacity at Rs.770/- per month could reasonably be considered for the appellant and even after adopting a lower side multiplier of 15, he is entitled for a compensation of Rs.1,28,600/- towards pecuniary loss. Learned Judge of the Tribunal has been entirely unjustified in restricting the total award in a meagre sum of Rs. 40,000/- on such baseless consideration that the injured still has his right hand available and could take up any other job. The observations fall too short of reasonableness while assessing just compensation for a victim of motor accident; and it is further inexplicable that while awarding a paltry sum of Rs.40,000/- learned Judge has further restricted the rate of interest only at 4% per annum. Having regard to the circumstances of the case, taking into consideration the nature of injuries suffered and entitlement of reasonable compensation towards pecuniary and non-pecuniary losses to the present claimant including loss of earning, medical and dietary expenditure, attendant charges, pain and suffering and loss of amenities in life, this Court is of opinion that the appellant is entitled for a minimum of Rs.1,65,000/- as compensation and, therefore, deserves to be allowed a further sum of Rs.1,25,000/-. Having regard to the circumstance of the case, interest deserves to be allowed at

the least at the rate of 6% per annum on the enhanced amount of award from 21.03.1983.

Accordingly, this appeal succeeds and is partly allowed. A further award of Rs.1,25,000/- is made in favour of the appellant alongwith interest at the rate of 6% per annum from 21.03.1983. The amount payable under the modified award shall be deposited with the Tribunal by the respondent-insurer within 30 days from today; and on deposit, half of the amount be paid cash to the claimant and the remaining be invested in a Monthly Saving Scheme of Post Office for a minimum period of six years. Parties are left to bear their own costs of this appeal.

(DINESH MAHESHWARI),J.

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